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### Book review of marco zinzani, market integration through network governance

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Marco Zinzani, *Market Integration through 'Network Governance'. The Role of European Agencies and Networks of Regulators*. Cambridge: Intersentia, 2012. 304 pages. ISBN: 978-1-78068-128-3. EUR 75.

The trend of network models as institutional options for the consolidation of the internal market can also be traced in the field of the EU network infrastructure industries. This aptly written and well documented book, defended as a PhD thesis at Maastricht University, aims to identify the key characteristics of network models for the regulation of European network infrastructure industries, to assess the role of law therein and to draw conclusions about the extent to which these models meet the precepts of EU constitutional and administrative law (p.1). While the issue of networks of regulators and network agencies had predominantly been analysed through the lens of political science, the aim of this book is to assess the phenomenon from a legal perspective, especially by examining the networks in the light of the principles of political and legal accountability and good governance norms.

The first chapter describes how a number of factors have led to the rapid development of European regulatory networks in the network industries. First, European regulatory networks are linked to the creation of national independent regulatory agencies, which have a crucial task in implementing the EU directives for the liberalization of the network industries. The national authorities are given broad discretionary powers to stimulate competition and market integration in the network industries. Thus, the national regulators become part of the EU administration. Informal regulatory cooperation between the national regulatory authorities and the European Commission is promoted and encouraged by the Commission to ensure an effective and consistent application of EU law. In that way, networks function as an alternative to the creation of a supranational institution, the latter meeting opposition from the Member States. According to Coen and Thatcher, the creation of European networks of regulators ultimately required a double delegation of powers and functions: one ("upwards") from the national independent regulatory authorities and a second ("downwards") from the Commission. The practice of double delegation can complicate not only the allocation of political responsibility for the activities of the networks but also the monitoring of the exercise of delegated powers, making it difficult for the traditional checks and balances at both the EU and national levels to be effective (p. 29). Next to the networks of national authorities, EU agencies represent another important form of EU administrative governance in the network industries. European network agencies have partly taken over the roles and tasks of the European networks of regulators. Despite the fact that networks of regulators and network agencies share similar features, the two models also present some distinguishing factors. Unlike networks of regulators, network agencies have legal personality and in some case the power to take binding decisions, excluding those which imply policy choices. Network agencies operate and take

decisions through formalized relationships, and therefore seem to have a clearer position in the EU institutional framework. The study questions whether or not the two models can coexist or exclude each other (p. 42).

The second chapter deals in detail with the problematic legal aspects of European networks of regulators and European regulatory network agencies. Legal notions of the concepts of legitimacy and accountability are the main standards against which EU networks of regulators and EU network agencies can be assessed. First, the bodies should respect the principle of institutional balance which has been elaborated by referring to state of the art literature and case law on this EU principle of law. While the author acknowledges the controversies regarding the interpretation of the *Meroni* case law, he adheres to a strict interpretation of the *Meroni* principle, entailing that EU law prevents the delegation of any discretionary powers to EU regulatory agencies (p. 60). Meanwhile the ECJ has handed down the *Short Selling* judgment (Case C-270/12, *UK v. Parliament and Council*), which has loosened the *Meroni* doctrine by allowing the delegation of discretionary powers to European agencies, provided that EU law provides for criteria and conditions that limit the exercise of powers that can be subjected to judicial review. Secondly the networks and the networks agencies should be subjected to political and legal accountability. Building on the seminal work of Mark Bovens, the book provides a useful working definition of accountability and narrows the concept so that it can be adopted as a tool for the legal analysis of European networks of regulators and network agencies (p. 65). Political accountability refers to the political monitoring of networks and agencies by the European Parliament and/or the national parliaments at their respective levels, and the political processes by which networks and agencies can be held accountable for their activities (p. 68). The traditional model of parliamentary accountability cannot be fully applied due to the peculiar nature of networks of regulators. European networks are not, in the current structure, EU institutions, and, as such in principle they are not politically accountable to European institutions, because of the lack of any concrete legal instrument to hold them accountable (p. 69). The author takes legal accountability as the processes to control the legality of the acts of regulatory networks and network agencies, including the duty to provide reasons and adequate judicial protection for the market parties, other EU institutions and the Member States against acts affecting their interests. Not surprisingly, due to the lack of clarity of their legal status, the issue of legal protection against the actions of the European networks of national regulators is a grey area (p. 75). While the Lisbon Treaty explicitly made the acts of agencies reviewable acts, it did not mention networks of national authorities. Furthermore, it remains to be seen to what extent legal review of acts of the network agencies is available for interested parties. The author points out the novelty of Article 263(4) TFEU: it will not be necessary to show individual concern in relation to a regulatory act that is of direct concern and does not entail implementing measures. However, several cases (e.g. Cases C-583/11 P, *Inuit Tapiriit Kanatami* and C-274/12 P, *Telefónica*) indicate that the ECJ interprets the term regulatory act narrowly, limiting the *locus standi* for individuals against acts of general application. The third instrument to control the activities of the European regulatory networks and the European network agencies is the general administrative rule of law. For that purpose the author especially assesses the activities of the networks and the network agencies in the light of the principles of transparency and participation.

Chapters 3 and 4 focus on the institutional structures created for the regulation of the European network industries and assess them in the light of the three previously mentioned instruments of administrative and constitutional law. Chapter 3 aptly describes the growing importance of informal regulatory networks that ensure regulatory cooperation between different private and public stakeholders in the energy sector. The national energy regulators started informal cooperation within the Council of European Energy Regulators (CEER) to enhance cooperation, information exchange and assistance between national energy regulators and to act as an interface at the European level with the European Commission. The second energy directives formalized the informal regulatory role played by CEER by establishing the European Regulators Group (EREG). Because of the informal status of EREG, the author illustrates that there were serious gaps in the political and legal accountability of the EREG.

The third package of European energy directives and regulations did not only enhance the requirements concerning the powers and the political independence of the national regulators, it also transformed ERGEG into a European regulatory agency with its own legal personality, the Agency for the Cooperation of Energy Regulators (ACER). The possibilities of legal and political accountability of the activities of the network agency have improved in comparison with the situation of the regulatory cooperation within the regulatory network ERGEG. Furthermore, ample good governance requirements have been included in the founding regulation establishing ACER – also enhancing its accountability towards the stakeholders. However, political and legal accountability mechanisms are complex processes as they require focusing on a complex, multi-level situation with different lines of responsibility for policy and legal input and output connecting the Commission, the regulatory European agency and the Member States with their national regulatory authorities. This leads to difficulties in identifying the correct sources of accountability of the different actors involved from both a political and legal perspective (p. 156). Chapter 4, describes how, like EU energy regulation, EU telecom regulation has been characterized by an institutional “network trend”. However, in telecoms, by contrast to energy, all the successive attempts to create a regulatory agency have failed and networks continue to be a key player of regulatory policy-making (p. 159). BEREC (Body of European Regulators for Electronic Communications) is the result of a European compromise, reflecting on the one hand the still intergovernmental and not supranational character of EU telecoms regulation and on the other hand the desire to foster flexibility in the regulatory decision-making process. While BEREC does not have legal personality, it is supported by the Office, which is an EU body performing professional and administrative tasks in support of BEREC.

In Chapter 5, the author concludes that overall the features of ACER and BEREC clearly show the intention to institutionalize the pre-existing networks of regulators and confer a higher status upon them, with a strengthened position in the EU law framework. The developments also show that European networks of regulators will continue to exist next to the network agencies. Although the creation of ACER and BEREC has improved the legal and political accountability of the networks, the author still raises some concerns and recommends further refinements of the EU legal framework.

The study reveals in a convincingly and scientifically sound way the institutional complexities of models of multi-level governance that are present within the EU administrative system. The EU network industries are characterized by ever evolving institutional arrangements (p. 257). As illustrated by the *Short selling* judgment, the ECJ’s case law also evolves, paving the way for strengthening the position of ACER and BEREC and enlarging their powers within certain conditions and limitations. The development of new institutional structures has not evolved in tandem with new instruments for legal and political accountability. Whereas the regulations of BEREC and ACER have improved the accountability of the network agencies, some gaps remain resulting from the double delegation of powers by the Commission and the NRAS to the new European bodies. Further research needs to be done into the actual functioning of new accountability mechanisms, providing ground for an in-depth investigation into possible ways to fine-tune the current procedures and mechanisms in light of the multi-level context in which they operate. The institutional questions and issues of the network industries will thus continue to pose exciting challenges for legal scholars.

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